

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:09CR278 HEA
)	(FRB)
MARIO DARNELL SMITH,)	
)	
Defendant.)	

MEMORANDUM,
REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

A review of some of the procedural history of this cause will serve to put the current matter in context.

The defendant was first charged in this matter by an indictment filed on April 16, 2009. The cause was assigned to United States District Judge Henry E. Autrey. Pretrial matters were assigned to the undersigned United States Magistrate Judge.

The defendant was taken into custody and made his initial appearance before the court on April 17, 2009. On April 20, 2009, retained counsel John P. Rogers entered his appearance to represent the defendant. On April 21, 2009, the defendant appeared before the undersigned for arraignment and entered a plea of not guilty. An Order Concerning Pretrial Motions was entered that same day, putting in place a schedule for the filing and hearing of pretrial motions.

After several requested continuances, on May 28, 2009, defendant filed a Motion To Suppress Statements (Docket No. 24) and

a Motion To Suppress Evidence (Docket No. 25). A hearing was held on the motions on June 11, 2009, at which testimony and evidence was adduced on the motions. Following the hearing, on June 15, 2009, the defendant filed a Supplemental Motion To Suppress Evidence And To Suppress Statements (Docket No. 33) adding additional grounds in support of his motions, to which the government responded on June 23, 2009. (Docket No. 35). A written transcript of the hearing was subsequently prepared and filed with the court on June 19, 2009 (Docket No. 34). On August 12, 2009, the undersigned filed a written Memorandum, Report and Recommendation, making findings of fact and conclusions of law and recommending that the defendant's Motions to Suppress Statements and Evidence be denied (Docket No. 36). Objections to the Report and Recommendation were filed by the defendant on August 24, 2009. (Docket No. 40 and 41). On September 21, 2009, Judge Autrey filed an Opinion, Memorandum and Order overruling defendant's objections, adopting the Report and Recommendation of the undersigned and denying the defendant's Motions to Suppress Statements and Evidence. (Docket No. 44).

Thereafter, the defendant dismissed his retained counsel and four other attorneys have been appointed to represent the defendant at one point or other. The defendant is currently represented by attorney Stephen Welby who was appointed to represent the defendant on February 5, 2010. (Docket No. 83).

On March 24, 2010, defendant, through counsel, filed a Motion To Reopen The Suppression Hearing. (Docket No. 98), which was granted by Judge Autrey on March 26, 2010. (Docket No. 100). the matter was referred to the undersigned.

On April 23, 2010, a supplemental hearing was held on defendant's Motions To Suppress Statements and Evidence. A written transcript of the hearing was subsequently prepared and filed with the court (Docket No. 112).

At the supplemental hearing the defendant offered the testimony of two witnesses. The first was Detective Robert Vogel of the St. Louis County Police Department. Detective Vogel testified initially at the hearing before the undersigned on June 11, 2009. His testimony at the supplemental hearing on April 23, 2010, was consistent with and did not differ significantly, on any material fact, from his testimony at the first hearing. The second witness, called by the defendant at the supplemental hearing was Shana Lewis. Lewis is the mother of a child fathered by the defendant. Lewis testified that she saw the defendant in the evening before his arrest on April 15, 2009, and again the next day following his arrest. She testified that she observed injuries to defendant's face and head area after his arrest that were not present when she saw the defendant on the evening prior to his arrest. Her testimony is consistent with evidence adduced at the previous hearing that the defendant struggled with officers at the time of his arrest and had to be physically subdued to effect the arrest. He was taken to a hospital following his arrest and was

released to police custody when he refused treatment for his injuries. None of the evidence adduced at the supplemental hearing would cause the undersigned to change or revise the findings of fact made in the Memorandum, Report and Recommendation filed on August 12, 2009, nor alter the discussion of the law applicable to those facts, or the conclusions reached therein.

Therefore, for the reasons set out in the Memorandum, Report and Recommendation filed on August 12, 2009, the undersigned continues to recommend that the defendant's Motions To Suppress Statements and Evidence be denied.

According,

IT IS HEREBY RECOMMENDED that defendant Mario Darnell Smith's Motion to Suppress Statements (Docket No. 24), Motion to Suppress Evidence (Docket No. 25), and Supplemental Motion to Suppress Evidence and to Suppress Statements (Docket No. 33) be denied.

The parties are advised that they have to and including **July 23, 2010**, in which to file written objections to this Report and Recommendation. Failure to timely file objections may result in waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).


UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of July, 2010.